No. 91-948

IN THE

Supreme Court of the United States

October Term, 1992

CHURCH OF THE LUKUMI BABALU AYE, INC.,

—and—

ERNESTO PICHARDO,

Petitioners,

—against—

CITY OF HIALEAH, FLORIDA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF *AMICUS CURIAE* OF INSTITUTE FOR ANIMAL RIGHTS LAW, AMERICAN FUND FOR ALTERNATIVES TO ANIMAL RESEARCH, FARM SANCTUARY, JEWS FOR ANIMAL RIGHTS, UNITED ANIMAL NATIONS, and UNITED POULTRY CONCERNS, IN SUPPORT OF RESPONDENT CITY OF HIALEAH, FLORIDA

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July 31, 1992

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INTERESTS OF *AMICI CURIAE*[1]

Institute for Animal Rights Law, a New York charitable trust, was created for the purpose of advancing the rights of animals. Its programs include an active *pro bono amicus curiae* effort on its own behalf and on behalf of other animal rights and animal welfare organizations. By addressing important legal issues affecting the well being of animals, it is able to further its mission of seeking to eliminate cruelty to, and other abuses of, animals.

American Fund for Alternatives to Animal Research devotes the main focus of its energy to giving financial assistance to scientists to develop, validate, and teach non-animal means of research and testing. It also supports other means to reduce the suffering of animals.

Farm Sanctuary is a national, non-profit organization representing approximately 10,000 members throughout the United States. The organization was formed in 1986 to address the serious animal abuse problems associated with "food animal" production. Among its various educative, legislative, and investigative programs, Farm Sanctuary operates a 175-acre working farm shelter for victims of animal agriculture.

Jews for Animal Rights, founded in 1985, seeks to raise the consciousness of the Jewish community about animal abuse. Judaism has a very long tradition of ethical concern for animals. This tradition is commonly called "tsa'ar ba'alei chaim," or "remember the pain of living creatures." This is the organization's motto, and the organization's goal is to make this millennially-old Jewish value a contemporary moral issue through promoting vegetarianism and by seeking to influence the animal-related decisions of Jewish organizations, rabbis, and Jewish action groups.

United Animal Nations, U.S.A. Chapter ("UAN-USA") serves to promote unity within the animal protection movement; to

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[1] *Amici* file this brief with permission of respondent; we understand that the blanket consent of petitioners has been filed with the Clerk of this Court.

coordinate, but never to compete. It convenes a General Assembly for organizations and individuals dedicated to humane treatment for animals; fund projects and supports local or specialized organizations and individuals working on behalf of animals; participates in and orchestrates national protest events; and puts animal exploiters "on trial" to encourage pressure against them. UAN-USA has also created an Emergency Animal Rescue Service to provide assistance to animals, wild or domestic, in times of great need or disaster, whether manmade or natural. Since the creation of UAN-USA in 1985, 41 organizations have joined it in support of unified efforts for animals.

United Poultry Concerns is a non-profit organization which addresses the use of domestic fowl in food production, science, education, and entertainment. It seeks to make the public aware of the ways domestic fowl are used in this society and elsewhere in the world. It promotes the respectful and companionable, non-exploitive view and treatment of these birds, holding that the production and keeping of them for food and other utilitarian purposes is inherently inhumane, not only because of the physical pain and suffering involved, but because it humiliates their dignity, encourages human smugness towards the rest of life, and sustains a psychological atmosphere that is demeaning and deficient.

SUMMARY OF ARGUMENT

A host of justiciability problems, either singly or in combination, plague this suit. As the ordinances challenged here constitutionally have never been enforced, and as petitioners' applications to sacrifice animals remain pending even today, the case is not ripe. Moreover, other laws which petitioners have not challenged would nevertheless prevent them from sacrificing animals even if petitioners prevail before this Court. The ultimate problem they face (an alleged inability to sacrifice) will not be redressed by a favorable decision and therefore petitioners lack standing. In addition, as petitioners no longer wish to sacrifice animals at the current site of the church, the case has become moot. Because resolution of the constitutional issues depends upon

an initial construction of state law upon which the state courts have not yet passed, the district court ought to have abstained. And finally, because the essence of petitioners' as-applied constitutional challenge has always been that respondent passed the ordinances with the express intention of chilling the free exercise of their religion, since the district court found as a fact that respondent had no such intent, nothing remains of the case to review but that factual determination — which the court of appeals affirmed. Accordingly, the Court should dismiss the writ of *certiorari* as having been improvidently granted.

ARGUMENT

I.

STATUTORY/PROCEDURAL ANALYSIS

Before this Court can properly exercise its Article III powers of review, and because *amici* have noted in other of the briefs submitted here a less-than-perfect grasp of exactly what the City of Hialeah actually did, the Court must be presented with a clear statement of which statutes are (and are *not*) involved here; what these statutes do (and do *not*) provide; which statutes petitioners actually challenged (and which they did *not*); and what the district court and the court appeals decided (and what they did *not*).[2]

Beginning in June of 1987, in response to petitioners' announcement that the Church of the Lukumi Babalu Aye, Inc., at its *first* church site, intended "to function as an established Santeria

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[2] As the Court is acquainted with the facts from the presentations of others, those facts are recited herein only to the extent they are necessary to carry the argument. References to the Trial Record are denominated "(R___)"; references to the Transcript of Oral Argument after Trial are denominated "(T___)"; references to the Appendix to the Petition for Certiorari are denominated "(A___)"; and references to the Joint Appendix are denominated "(JA___)".

church[,] . . . perform[ing] all of the religious rituals of Santeria, including animal sacrifice," (A22) the Hialeah City Council passed several ordinances (A22, A28):[3]

City of Hialeah Ordinance No. 87-40 (June 9, 1987), promulgated due to "concern over the potential for animal sacrifices being conducted in the City of Hialeah," incorporated by reference Florida Statute, Chapter 828. (A52, A56) Of particular note to this case, Fla. Stat. § 828.12(1), entitled "Cruelty to Animals" makes it a misdemeanor to "unnecessarily . . . kill[ ] any animal . . . ." (A56)[4] Thus, by Florida state statute *and* by City of Hialeah ordinance, the "unnecessary killing of animals" was forbidden. It still is.

City of Hialeah Ordinance No. 87-52 (Sept. 8, 1987), though certainly not a model of clarity, recites that it was enacted because of "concern regarding the possibility of public ritualistic animal sacrifices within the City of Hialeah." (A52-53) This ordinance established the following: i) it forbade the ownership, possession, slaughter, or sacrifice of animals by persons "intending to use such animal for food purposes" *and* by groups or individuals that "sacrifice[ ] animals for any type of ritual, regardless of whether or not the flesh or blood of the animal is to be consumed" (A53); ii) it defined "sacrifice" to mean "to unnecessarily kill, torment, torture, or mutilate an animal in a public or private ritual or ceremony not for the primary purpose of food consumption" (A52); and iii) it made clear that the slaughter of animals for food purposes by properly licensed and zoned establishments was not prohibited. (A53)

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[3] The City Council at that time consisted of members Cardoso, D'Angelo, Ehevarria, J. Martinez, Mejides, and Robinson; the Mayor was Raul L. Martinez.

[4] *Per* Fla. Stat. § 828.27(6), Hialeah did not adopt the penalty provisions of § 828.12, but instead provided for punishment by fine not to exceed $500 and/or a jail term of 60 days. The Florida state statute provides for a fine of not more than $5,000 and/or a jail term of not more than one year. *See* Fla. Stat. §§ 828.12(1), 775.082.

City of Hialeah Ordinance No. 87-71 (Sept. 22, 1987), which recites that "the sacrificing of animals within the city limits is contrary to the public health, safety, welfare and morals of the community" (A53), adopted the same definition of "sacrifice" as Ordinance No. 87-52 (A53), and provided that "[i]t shall be unlawful for any person, persons, corporations or associations to sacrifice any animal within the corporate limits of the City of Hialeah, Florida." (A54)

Finally, *City of Hialeah Ordinance No. 87-72* (Sept. 22, 1987), which recites that "the City Council of the City of Hialeah, Florida, has determined that the sacrificing of animals on the premises other than those properly zoned as a slaughter house, is contrary to the public health, safety and welfare" (A54), defined "slaughter" as "the killing of animals for food" (A54), and provided that only properly licensed and zoned slaughterhouses could slaughter animals within the city limits of Hialeah. (A54)

In addition to this statutory scheme, an opinion by the Attorney General of Florida was issued shortly after the promulgation of Ordinance No. 87-40. The Opinion, rendered in response to an inquiry by the City Attorney of Hialeah, advised the City that "the sacrificial killing of animals other than for food consumption" came within the state statutory language proscribing the "unnecessary killing" of an animal and was therefore "prohibited by s. 828.12." Atty. Gen. Op. 87-56 (July 13, 1987).

In sum, as a result of the laws, ordinances, and Opinion referred to above, in Hialeah itself *and* in Florida as a whole, *no one was allowed to kill an animal in a ritual or ceremony not for the primary purpose of food consumption; and in Hialeah, only properly licensed and zoned slaughterhouses could kill animals for food.* This case, to the extent that it is about anything at all, is about only that.

Further facts are necessary to illuminate what *is* (and is *not*) at issue in this case:

On August 7, 198*7*, Hialeah granted the Church of the Lukumi Babalu, Inc. a certificate of occupancy to operate a church on its premises. (A26) Two years later, on July 10, 198*9* (just prior

to the trial of this action), petitioners applied for a slaughterhouse occupational license; petitioners also applied for zoning authorization to operate their premises as a slaughterhouse. As petitioners subsequently explained to the district court at trial, "we were told by an assistant city attorney that we could do what we're in this lawsuit about if we file the proper licensing application which we have done." (R87) Petitioners' applications, however, have been held in abeyance pending the outcome of this litigation. (A25) *Thus, at no time were any of the Hialeah ordinances set forth above actually applied to petitioners* — no one has ever been fined, and no one has ever been jailed for disobeying the ordinances by improperly sacrificing or slaughtering animals in Hialeah. (A29; R149) Petitioners do not contend otherwise.

On September 25, 1987, petitioners filed a complaint in the District Court for the Southern District of Florida alleging, pursuant to 42 U.S.C. § 1983, that respondent had violated their First Amendment rights as secured by the Fourteenth Amendment. Their § 1983 suit was predicated upon a claim that agents of Hialeah had purposely harassed them because of their religion. Petitioners alleged that they had been discriminatorily harassed by respondent during the licensing and inspection process which the Church had to go through before it opened, but this claim was rejected by the district court's findings of fact. This determination was affirmed by the court of appeals, and was not raised by the petition for *certiorari*. Petitioners also sought a declaratory judgment that the ordinances prohibiting sacrifice were unconstitutional, alleging that they had been passed with the intent to chill petitioners' Free Exercise rights. Petitioners did *not* in any way challenge the state law, § 828.12(1), which forbade the "unnecessary killing of animals" (A3, A29, A49); and they did *not* mount a constitutional challenge against the ordinances insofar as they restricted the slaughter of animals to properly licensed and zoned slaughterhouses. (A23, A29)

In July and August of 1989, a nine-day bench trial was held. In a Memorandum Opinion, dated October 5, 1989, the district court awarded judgment in favor of respondent, finding that it had not violated petitioners' constitutional rights. Preliminarily,

however, the court made several crucial findings of fact and law. It held, *as a matter of law*:

- that even if the challenged ordinances were invalid, petitioners "would still be prohibited from performing ritual sacrifices under § 828.12 of the Florida Statutes. *See* Opinion Attorney General 87-56 (1987)" (A29);
- that there were, moreover, "several provisions of the Hialeah City Code that would apply" to prohibit ritual animal sacrifice "including zoning provisions . . . and licensing provisions" (A29);
- that "at no time have [petitioners] raised any free exercise challenge addressed toward the validity of [the] slaughterhouse regulations . . ." (A29; *see also* A23);
- that petitioners "cannot maintain a facial challenge to the ordinances" (A41); and
- that petitioners' only remaining constitutional claim going to the ordinances was an as-applied claim that they "were passed *because of the council members' intent* to discriminate against the Church and to keep the Church from establishing a physical presence within the City," (A28) (emphasis added), *i.e.*, "that the passage of the ordinances *was intended* to force the Church out of Hialeah, and to chill the religious freedom of Santeria practitioners by imposing criminal sanctions on practices that are an integral part of that religion." (A29)

None of these determinations of law were disturbed by the court of appeals — which, of course, affirmed the judgment of the district court — and *none* of these legal determinations were challenged in the petition for *certiorari*.

Thus, since Ordinance No. 87-40 ("unnecessary killing") was redundant in light of Fla. Stat. § 828.12(1), which was not challenged; and since Ordinance No. 87-72 (slaughterhouses) also was not constitutionally challenged; and since Ordinance No. 87-52 (no possession of animals intended to be sacrificed) was subsumed under Ordinance No. 87-71, petitioners' remaining entire case came down only to this:

1) an "as applied" constitutional challenge,

2) to the City's alleged discriminatory intent,

3) to "chill" the alleged free exercise right of petitioners,

4) to "sacrifice," *i.e.*, to unnecessarily kill an animal in a ritual or ceremony not for the primary purpose of food consumption,

5) by promulgating anti-sacrifice Ordinance No. 87-71.

This limited challenge is extremely significant in light of the district court having found, *as a matter of fact*, that there was "no evidence" to establish petitioners' contention that the ordinances had been passed with discriminatory intent (A28) — that petitioners' "allegations of discrimination by the City are not supported by the facts" (A49) — that "there was no proof of any discriminatory action by the City against the . . . Church or any of its practitioners." (A49) To the contrary, the court found that the trial evidence established that

> "the council members' intent was to stop the practice of animal sacrifice in the City. Although this concern was prompted by the Church's public announcement that it intended to come out into the open and practice its religious rituals, including animal sacrifice, the council's intent was to stop animal sacrifice whatever individual, religion or cult it was practiced by." (A28)

In affirming the judgment of the district court, the court of appeals expressly left the trial court's determinations undisturbed, noting that "[t]he district court made extensive findings of fact . . ., and no party argues that the record does not support these findings." (A2) Indeed, as *none* of the district court's findings of fact were even challenged by petitioners in the court of appeals, they therefore have not been raised in the questions presented upon which *certiorari* was granted.

II.

NONJUSTICIABILITY

It is the position of *amici* that this could not be a worse case to serve as the vehicle for what could become an extremely important Free Exercise precedent. Respectfully, *amici* believe that this case's foundation is built on sand. It is, in *amici's* opinion, rife with justiciability problems which strongly counsel the Court to dismiss the writ of *certiorari* as improvidently granted.

A. Ripeness

First, the case is not ripe. *See Metropolitan Washington Airports Auth.* v. *Citizens for Abatement of Aircraft Noise, Inc.*, 111 S. Ct. 2298, 2306 n.13 (1991) (ripeness relates to court's jurisdiction under Article III, and court must consider it on its own initiative).[5] As already indicated *supra* at 6, the ordinances at issue have never been applied to *anyone*, let alone to the petitioners. This means that, especially after the district court's fact-finding and the court of appeals' affirmance, all that is left in this Court of petitioners' complaint is *a claim for an as-applied, allegedly intentional "chill."* However, not every plaintiff who merely alleges a First Amendment "chill" has thereby established the existence of a case or controversy, *National Student Ass'n* v. *Hershey*, 412 F.2d 1103, 1113-14 (D.C. Cir. 1969) — something this Court expressly recognized in both *Laird* v. *Tatum*, 408 U.S. 1 (1972), and *Poe* v. *Ullman*, 367 U.S. 497 (1961). Indeed, in contrast to *every* Free Exercise (or even *arguably* Free Exercise) case that has preceded it in this Court, this case — where the ordinances at issue have never even been applied — is exceedingly unripe. By the time earlier cases were brought: George Reynolds had *already* been charged with and found guilty of bigamy, *Reynolds* v. *United States*, 98 U.S. 145 (1878); Samuel D. Davis

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[5] As the ordinances have severability clauses, petitioners must present a ripe claim as to each provision of each ordinance to permit them to mount an attack against the ordinances as a body. *See Communist Party of United States* v. *Subversive Activities Control Bd.*, 367 U.S. 1 (1961).

had *already* been indicted for and convicted of obstruction of justice for falsely taking an oath, *Davis* v. *Beason*, 133 U.S. 333 (1890); the United States had *already* brought suit against the Mormon Church seeking the dissolution of the church's charter and the escheat of much of its property, *Mormon Church* v. *United States*, 136 U.S. 1 (1890); the Compulsory Education Act of 1922 had *already* caused withdrawal from the Society of Sisters' schools of children who would have attended them with the result that the Sisters had experienced a steady decline of their income, *and* the state had proclaimed its intention to strictly enforce the statute, *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925); Hamilton and his schoolmates had *already* been suspended from the university for refusing to take the prescribed military training courses, *Hamilton* v. *Regents*, 293 U.S. 245 (1934); Schneider had *already* been charged, tried, and convicted of soliciting without a permit, *Schneider* v. *State*, 308 U.S. 147 (1939); and Newton Cantwell and his two sons also had *already* been charged, tried, and convicted, *Cantwell* v. *Connecticut*, 310 U.S. 296 (1940); *see also Jones* v. *Opelika*, 319 U.S. 103 (1943); *Murdock* v. *Pennsylvania*, 319 U.S. 105 (1943); *Martin* v. *City of Struthers*, 319 U.S. 141 (1943); *Follett* v. *Town of McCormick*, 321 U.S. 573 (1944); *Marsh* v. *Alabama*, 326 U.S. 501 (1946); *Fowler* v. *Rhode Island*, 345 U.S. 67 (1953); Sarah Prince had *already* been convicted for violating Massachusetts' child labor law, *Prince* v. *Massachusetts*, 321 U.S. 158 (1944); the Ballards had *already* been convicted for using and conspiring to use the mails to defraud, *United States* v. *Ballard*, 322 U.S. 78 (1944); Braunfeld was *already* about to go out of business because of application to him of the Sunday blue laws, *Braunfeld* v. *Brown*, 366 U.S. 599 (1961); Torcaso had *already* been refused a commission as notary public, *Torcaso* v. *Watkins*, 367 U.S. 488 (1961); Sherbert had *already* been fired and then denied unemployment compensation benefits, *Sherbert* v. *Verner*, 374 U.S. 398 (1963); *see also Thomas* v. *Review Bd. of Indiana Employment Sec. Div.*, 450 U.S. 707 (1981); *Hobbie* v. *Unemployment Appeals Comm'n of Florida*, 480 U.S. 136 (1987); the children of Jehovah's Witnesses had *already* been administered blood transfusions against their parents' wishes, *Jehovah's*

Witnesses v. *King County Hosp.*, 598 U.S. 390 (1968) (per curiam), *aff'g*, 278 F. Supp. 488 (D.D.C. 1967) (three-judge court); Gillette had *already* been convicted of wilfully failing to report for induction into the army, *Gillette* v. *United States*, 401 U.S. 437 (1971); Jonas Yoder, Wallace Miller, and Adin Yutsy had *already* been convicted of violating the compulsory school attendance law, *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972); Robison, who as a conscientious objector, had *already* performed alternate civilian service, and had therefore been denied the educational benefits accorded veterans of active service, *Johnson* v. *Robison*, 415 U.S. 361 (1974); George Maynard had *already* been convicted of knowingly obscuring the state motto on his license plate, *Wooley* v. *Maynard*, 430 U.S. 705 (1977); McDaniel, the minister, had *already* been ousted from his position as a state constitutional convention delegate by the Tennessee Supreme Court, *McDaniel* v. *Paty*, 435 U.S. 618 (1978); Lee had *already* partially paid to the IRS assessed employment taxes which he claimed a religious right to withhold, *United States* v. *Lee*, 455 U.S. 252 (1982); the IRS had *already* revoked Bob Jones University's tax-exempt status, *Bob Jones Univ.* v. *United States*, 461 U.S. 574 (1983); the Secretary of Labor had *already* filed an action against the Tony and Susan Alamo Foundation alleging a violation of minimum wage laws, *Tony & Susan Alamo Found.* v. *Secretary of Labor*, 471 U.S. 290 (1985); S. Simcha Goldman had *already* received a letter of reprimand, a negative recommendation, and was threatened with court-martial, *Goldman* v. *Weinberger*, 475 U.S. 503 (1986); Little Bird of the Snow's AFDC payments, medical benefits, and food stamps had *already* been cut off, *Bowen* v. *Roy*, 476 U.S. 693 (1986); access to Jumu'ah had *already* been eliminated for Shabazz, *O'Lone* v. *Estate of Shabazz*, 482 U.S. 342 (1987); the Forest Service had *already* determined that it was going to build a road through sacred Indian grounds, *Lyng* v. *Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439 (1988); the IRS had *already* disallowed deductions for Scientology "auditing" sessions, *Hernandez* v. *Commissioner*, 490 U.S. 680 (1989); and Alfred Smith and Galen Black had *already* been fired from their jobs as drug counselors for taking peyote and had been denied

unemployment benefits, *Smith* v. *Employment Div., Dept. of Human Resources*, 494 U.S. 872 (1990) (*Smith II*).

Even if the undisputed fact that the Hialeah ordinances were never applied to petitioners is not enough to show that this case is technically *un*ripe, the foregoing cases demonstrate that this case must be the *least* ripe Free Exercise case *ever*, which by itself should give this Court pause. As the district court stated after trial: "There is no question that the evidence reveals that no effort was made by the church to in fact violate the ordinances so as to put that issue directly before this court on the basis of an unlawful arrest and challenging the constitutionality of the ordinance on that basis." (T24)

But there is more than that to petitioners' ripeness problem. Hanging in the air, still unresolved, are petitioners' applications for a license to slaughter and for a zoning variance to operate as a slaughterhouse. If these should be granted, petitioners will have the right to sacrifice animals in Hialeah *despite* the challenged ordinances, and petitioners' alleged Free Exercise rights will not at all be impeded. "A fundamental and longstanding principle of judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them." *Lyng*, 485 U.S. at 445. Because this case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all, rendering constitutional adjudication premature, this dispute is unripe. *See Lewis* v. *Continental Bank Corp.*, 494 U.S. 472 (1990); *Thomas* v. *Union Carbide Agric. Prods. Co.*, 473 U.S. 568 (1985); *see also Bowen* 476 U.S. at 715 (BLACKMUN, J., concurring); *id.* at 717 (STEVENS, J., concurring). Moreover, not only are there serious ripeness problems in this case, but petitioners also lack standing.

B. Standing

The standing doctrine imposes limitations of constitutional dimension upon the federal courts. Constitutionally, a threshold in every federal case is whether the plaintiff has made out a "case or controversy" within the meaning of Article III. *Lujan* v. *Defenders of Wildlife*, 112 S.Ct. 2130, 2136 (1992). Specifically, the plaintiff

must show an injury to him or herself "that is likely to be redressed by a favorable decision." *Simon* v. *Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 38 (1976); *see also Lujan*, 112 S. Ct. at 2136 (party invoking federal jurisdiction bears burden of *proving*, *inter alia*, redressability). Indeed, that likelihood must be "substantial." *See Duke Power Co.* v. *Carolina Envtl. Study Group*, 438 U.S. 59, 75 n.20 (1978). Without it, a federal court would not be the "last resort," and hearing the case would not be "a necessity." *See Allen* v. *Wright*, 468 U.S. 737, 752 (1984) (quoting *Chicago & Grand Trunk R. Co.* v. *Wellman*, 143 U.S. 339, 345 (1892)). Hearing this case is not "a necessity," and in fact would be "gratuitous," because petitioners cannot show a "substantial likelihood" that the relief they seek would flow from a favorable decision by this Court. *See Simon*, 426 U.S. at 38. While it is true that they "need not show that a favorable decision will relieve [their] *every* injury," *Larson* v. *Valente*, 456 U.S. 228, 243 n.15 (1982) (emphasis in original), petitioners fail to show potential relief from *any* alleged injury at all.[6]

Suppose that respondent's ordinances were found to be invalid. First, petitioners would still be prohibited from performing ritual sacrifices under unchallenged § 828.12 of the Florida Statutes, which Ordinance No. 87-40 incorporates (except as to punishment). (A29)[7] Section 828.12, Fla. Stat., prohibits persons from "unnecessarily" killing any animal "in a cruel or inhumane manner." Such "killing," at least in the opinion of the Attorney General of the State of Florida, includes ritual sacrifice. *See* Atty. Gen. Op. 87-56 (July 13, 1987). And though no reported Florida state *court* decision has passed on whether the *state* statute,

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[6] The lack of redressability was specifically raised by respondent at trial. (T75-76)

[7] The language of Ordinance No. 87-71 is similar to that of § 828.12, but that similarity alone does not render § 828.12 subject to constitutional challenge by petitioners. In order to remove the barrier to ritual sacrifice that § 828.12 erects, petitioners are required to mount a constitutional challenge to that section directly. This they have failed to do.

§ 828.12, prohibits animal sacrifice, *see* abstention discussion *infra* at 18-25, *amici* note that several arrests have indeed been made under this statute for animal sacrifice. On one occasion, three persons were arrested including a Ms. Ofelia Cueli-Garcia who "was arrested after a policeman saw her cut off a chicken's head and drink the blood."[8] On another, some 13 Santeria practitioners were arrested when police were called to a sacrifice scene after neighbors mistook the screams of the dying animals for those of a child.[9]

Second, various other local prohibitions would also continue to apply to petitioners, such as those governing zoning, health and sanitation, and licensing. (A29) Neither § 828.12 nor these local prohibitions were challenged by petitioners. (A23, A29)

Absent a showing of what would constitute "redressability," of course, "there can be no confidence of 'a real need to exercise the power of judicial review'" on petitioners' behalf. *Warth* v. *Seldin*, 422 U.S. 490, 508 (1975) (quoting *Schlesinger* v. *Reservists to Stop the War*, 418 U.S. 208, 221-22 (1974)). In this case, judicial review by this Court would result in what would amount to the rendering of a purely advisory opinion on a local ordinance's constitutionality — a "ruling" which would be contrary to the overwhelming weight of precedent. *See Larson*, 456 U.S. at 271. For, again, "[i]f there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that [this Court] ought not to pass on questions of constitutionality . . . unless such adjudication is unavoidable." *Id.* (quoting *Spector Motor Serv., Inc.* v. *McLaughlin*, 323 U.S. 101, 105 (1944)). Ruling on the constitutional question supposedly presented in this case is clearly avoidable — and to be avoided by this Court. *Cf. Lyng*, 485 U.S. at 446 (before passing on constitutional issue, courts below required to determine whether decision on that issue

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[8] *See Three Santeria Worshippers Charged With Animal Cruelty*, UPI, Apr. 26, 1991, *available in* LEXIS, Nexis Library, UPI File.

[9] *See Animal Sacrifice Debate Rekindled*, UPI, Apr. 15, 1991, *available in* LEXIS, Nexis Library, UPI File.

would have entitled plaintiffs to more relief than from their statutory claims — if no additional relief warranted, constitutional decision would have been unnecessary and thus inappropriate).

C. Mootness

The justiciability problems inherent in this case are compounded by the additional problem of mootness. Because of Article III's "case or controversy" requirement, the trial court was without power to decide a case which had become moot; the issues presented were required to be "live," and the parties needed a "personal stake" in the outcome of the litigation. *United States Parole Comm'n* v. *Geraghty*, 445 U.S. 388, 396 (1980). The "controversy," moreover, was required to exist throughout the course of the entire litigation. *Deakins* v. *Monaghan*, 484 U.S. 193, 199 (1988); *Burke* v. *Barnes*, 479 U.S. 361, 363 (1987); *Doe v. Sullivan*, 938 F.2d 1370, 1384 (D.C. Cir. 1991) (THOMAS, J., dissenting).

Petitioners' claim has been rendered moot on this appeal by their own actions. *See Deakins*, 484 U.S. at 200 (holding case mooted by plaintiff's withdrawal of claim for equitable relief); *Webster* v. *Reproductive Health Servs.*, 492 U.S. 490, 512-13 (1989) (same); *see also* 13A Charles A. Wright, *et al.*, *Federal Practice and Procedure: Jurisdiction 2d* § 3533.2 at 231 (1982). The evidence at trial established that from the time petitioners sought to establish a church, their mission was changing — and these changed circumstances have transformed what may have been a formerly "live" controversy into one whose resolution can have no impact on petitioners.

Petitioner Church of the Lukumi Babalu Aye, Inc. ("church") originally sought to establish itself at 173 West 5th Street in the City of Hialeah. Even at that early stage, the promoters decided that the function of the church would be *primarily* education, *not* sacrifice, by "establishing and promoting research among scholars to research this faith. . . ." (R648) Petitioner Pichardo indicated that the education function would occur on a broad basis: "[w]e can in fact educate right across the board *our* religious community *and* those who are *not* our religious community." (R660) (emphasis

added) Subsequently, the sacrifice function of the church apparently dropped out altogether when it moved to its present location at 700 Palm Avenue, for the mission of the church at its *new* location is *strictly* educational (R666), and involves education *not* of Santeros but of the non-Santerian public. (R860) *Indeed, that animal sacrifice would not ever take place at the new location has been clear to petitioners from the onset*. Said petitioner Pichardo at trial:

> "[w]e know that 700 Palm Avenue is not zoned for any animal sacrifices *and we never intended to have it at that location*."

(R848) (emphasis added). In fact, petitioners acknowledged at trial that animal sacrifice would be inappropriate at its present church site since it is located in a shopping center. (R849) Since the church site has been the only location where petitioners in this non-class-action have sought to sacrifice,[10] the disavowal of their intention to sacrifice at the church site renders this case moot. *Cf. Bowen* v. *Roy*, 473 U.S. 693, 720-23 (STEVENS, J., concurring); *id.* at 713-15 (BLACKMUN, J., concurring) (noting probable mootness problem). Moreover, petitioner Pichardo has indicated

[10] At trial, Pichardo repeatedly testified that part of his mission was to have sacrifice take place only at the church, thus bringing Santeria above-ground and providing a place where sanitation could be ensured. Moreover, as the case was not a class action, the only claims before the district court were those of the church and Pichardo. Petitioners' assertion at trial, then, that they were seeking to vindicate the rights of all Hialeahan Santeros to sacrifice animals wherever and whenever they wished (R215-16), was not only *not* their claim to make, but was *inconsistent* with their theory of the case. Indeed, it appears that Pichardo's dream of bringing Santeria out into the open is not shared by many Santeros in Hialeah. *See* Paige Elizabeth-Pruitt, *A Comparative Study of Yoruba Influence in Santeria* 15 (1988) (unpublished M.A. thesis, Florida State University) ("Recently, during the month of June, 1988, . . . L. Ernesto Pichardo established a *Santeria* church . . . which became the first formal place of worship for the sect. Many *santeros* were irate, claiming they felt Pichardo was trying to establish himself as leader, even though there is supposedly no hierarchy within *Santeria*").

that he no longer is a practicing priest involved with the ritual sacrifice of animals. He has shifted his attentions instead to research and education. (R859-60) It is for this reason that he has almost absolutely no knowledge of Santeria as it is practiced in Hialeah. (R859-60) In fact, at trial Pichardo admitted that the last time he had performed an animal sacrifice was *ten years ago* — and *that* sacrifice occurred in Mexico City, Mexico. (R685)

Since petitioners *no longer* present an interest in performing sacrifices at the current church location (if they ever *did*), and since the purpose of petitioners' church *has evolved* into one of education *exclusively* (if it ever *was* anything else), their case has been rendered moot because, *inter alia*, petitioners no longer have a "personal stake in the outcome" of this controversy. *See Lewis* v. *Continental Bank Corp.*, 494 U.S. 472, 478 (1990). For, precisely because the "church" can now most accurately be characterized as an academic Santerian think tank, with the "priest" Pichardo as its chief academician, the question of whether *petitioners* can constitutionally be forbidden from *sacrificing animals* in *Hialeah* is an *academic* one, which fails to present a "case or controversy."[11]

[11] Of course, to the extent that petitioners are able to argue that the case only *looks* moot — *i.e.*, that it is only due to the "chilling effect" of the ordinances that the "church" is no more than a Santerian studies center ("[i]n the meantime, we're handcuffed" (R666)) — such an argument is *only* possible because the case was so *un*ripe when commenced. Had Pichardo first been fined $5 or sentenced to a half-day jail term for *actually* sacrificing animals, one could be certain that in fact he *wanted* to sacrifice in Hialeah and that he was sacrificing *no longer* because of the fear of further prosecutions. As things stand, however, we cannot be certain whether Pichardo has not broken his decade-long sabbatical from animal sacrifice because of the mere existence of the ordinances, or whether it is due to the failed pipe dreams of a self-proclaimed Santerian "priest"/academic who nonetheless is delighted that his theoretical and sanitized version of "Santeria" is being aired in the United States Supreme Court. The possibility of the latter was crystallized by the following colloquy at trial:

(continued on next page...)

D. Abstention

Moreover, not only are there *ripeness*, *standing*, and *mootness* problems with this case which render it unsuitable for decision, but because it also involves difficult threshold issues of unsettled state law, very real *abstention* concerns are also present. In general, federal courts have a duty to adjudicate federal questions which are properly before them. *Brockett* v. *Spokane Arcades, Inc.*, 472 U.S. 491, 508 (1985) (O'CONNOR, J., concurring). An exception to that duty is found, however, in the doctrine of abstention. *Id.* In fact, "the proper course for federal courts [is to consider] *first* whether abstention is required." *Ohio Bureau of Employment Servs.* v. *Hodory*, 431 U.S. 471, 477 (1977) (emphasis added); *see also* Laurence H. Tribe, *American Constitutional Law* § 3-28, at 195-98 (2d ed. 1988).

Although this Court has developed several forms of abstention, those principles first enunciated in *Railroad Comm'n of Texas* v. *Pullman Co.*, 312 U.S. 496 (1941), are applicable here. *Pullman* abstention holds that federal courts should abstain from deciding a case such as this where the federal constitutional question can be addressed *only* by *first* resolving one or more difficult questions of unsettled state law. Because those questions

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[11](...continued from preceeding page)

"THE COURT: Would I be less than candid in saying that this is more right now in your own mind a dream than it is a reality?

[PICHARDO]: No, I would not say that would be fair."

(R873) *Amici* submit that the trial record as a whole, however, fairly establishes that *Pichardo* was less than candid in his answer, for it is quite evident that the Pichardian brand of "Santeria" — replete with a "fining system" for "deviants" and a "testing" procedure to determine "true" adherents — exists nowhere except perhaps in Pichardo's mind. *See* Migene Gonzalez-Wippler, *Santeria: African Magic in Latin America*, *passim* (6th ed., Original Publications 1990) (1973).

are unsettled, the district court should have "exercise[d] its wise discretion by staying its hands." *Pullman*, 312 U.S. at 501.[12]

Pullman abstention is based upon two principles: first, that federal courts should avoid the unnecessary resolution of federal constitutional issues; and second, that state courts should provide the authoritative adjudication of state law questions. *Brockett*, 472 U.S. at 508 (O'CONNOR, J., concurring).[13] Abstention is particularly appropriate "where an unconstrued state statute is susceptible of a construction by the state judiciary 'which might avoid in whole or in part the necessity for federal constitutional adjudication,'" or which might modify the constitutional question in a material way. *Bellotti* v. *Baird*, 428 U.S. 132, 147 (1976) (quoting *Harrison* v. *NAACP*, 360 U.S. 167, 177 (1959)). That a statute is merely "unconstrued" will not dictate abstention. *City of Houston* v. *Hill*, 482 U.S. 451, 469 (1987). Neither will "a bare, though unlikely" possibility that a statute will be subject to a limiting construction by state courts. *Hawaii Housing Auth.* v. *Midkiff*, 467 U.S. 229, 237 (1984). Instead, in order to warrant abstention, this Court has required that a statute be "*obviously* susceptible of a limiting construction." *Id.* (emphasis added) (internal quotation omitted).

Certain types of cases are more likely to warrant abstention. Among them

> "are those in which the federal constitutional challenge turns on a state statute, the meaning of which is unclear under state law. If the state courts would be likely to construe the statute in a fashion that would avoid the need for a federal constitu-

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[12] The prospect of abstention was specifically drawn to the court's attention at trial. (R22-23)

[13] Such abstention is not without its costs, for there are "delays inherent in the abstention process." *Harris County Comm'rs Court* v. *Moore*, 420 U.S. 77, 83 (1975). For this reason, this Court has counselled that the doctrine be invoked only in "'special circumstances,' and only upon careful consideration of the facts of each case." *Id.* (quoting *Zwickler* v. *Koota*, 389 U.S. 241, 248 (1967)).

> tional ruling or otherwise significantly modify the federal claim, the argument for abstention is strong. The same considerations apply where . . . the uncertain status of local law stems from the unsettled relationship between the state constitution and a statute."

Harris County Comm'rs, 420 U.S. at 84 (citations omitted). Cases raising questions under the First Amendment are not immune to abstention concerns; for "even in cases involving First Amendment challenges . . . abstention may be required." *Brockett*, 472 U.S. at 510 (O'CONNOR, J., concurring). The First Amendment cases in which this Court *has* expressed doubt concerning abstention all have involved *facial* challenges. *See, e.g., Hill*, 482 U.S. at 467 ("[W]e have been particularly reluctant to abstain in cases involving facial challenges based on the First Amendment"). Because this case does *not* involve a facial challenge (A41), *see supra* at 7,[14] abstention is appropriate here. Indeed, this is a case whose facts "call most insistently for abstention," in two respects. *See Harris County Comm'rs*, 420 U.S. at 84.

Petitioners challenge Ordinance 87-40, which incorporates by reference Chapter 828 of the Florida Statutes. The meaning of one section of those statutes, § 828.12, is unclear as a matter of Florida law. That section provides, in relevant part, that "[a] person who unnecessarily . . . mutilates, or kills any animal, or causes the same to be done, . . . is guilty of a misdemeanor of the first degree." Fla. Stat. § 828.12(1). The meaning of this section is

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[14] The district court was clearly correct in holding that petitioners could not mount a facial challenge to the ordinances since petitioners have not disputed the proposition that the ordinances would be constitutional as applied to the killing of animals in *non*-religious rituals or ceremonies, *cf. United States* v. *Salerno*, 481 U.S. 739, 745 (1987), nor have they argued that the ordinances are "so broad that they may inhibit . . . third parties" from exercising their First Amendment rights. *See New York State Club Ass'n* v. *City of New York*, 487 U.S. 1, 11 (1988) (citations omitted). Petitioners have not even attempted to demonstrate "from actual fact that a substantial number of instances exist" in which the ordinances cannot be constitutionally applied. *See id.* at 14.

pivotal because whatever it *may* mean, *that* meaning preempts conflicting local ordinances because of § 828.27(6) of the Florida Statutes, which provides that

> "[n]othing contained in this section shall prevent any county or municipality from enacting any ordinance relating to animal control or cruelty which is identical to the provisions of this chapter or any other state law, except as to penalty. *However, no county or municipal ordinance relating to animal control or cruelty shall conflict with the provisions of this chapter or any other state law.*"

Fla. Stat. § 828.27(6) (emphasis added). Clearly, the ordinances at issue in this case *relate* to animal control or cruelty. Whether they *conflict* with any provision of the Florida Statutes, however, is much less clear.

Ruling on petitioners' wholly separate prayer for relief seeking a declaration that, as a matter of state law, the ordinances were preempted by state statutes (*see* JA16), the district court found that "[t]he ordinances do not conflict with [state law] . . . but [merely] clarify [it]. . . ." (A22-23)[15] While the ordinances may indeed "clarify" rather than "conflict," one can easily imagine a Florida state court ruling to the contrary.[16] A comparison

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[15] The only support relied upon by the district court was the opinion of the Florida Attorney General that the "ritual slaughter" exemption, Fla. Stat. § 828.22(3), applies only to religious slaughtering of animals for the primary purpose of food consumption. (A31) *See* Atty. Gen. Op. 87-56 (July 13, 1987). Although the opinions of the Florida Attorney General are "persuasive and entitled to great weight in construing the Florida Statutes," *State* v. *Office of Comptroller*, 416 So.2d 820, 822 (Fla. Dist. Ct. App. 1982), they can be no substitute for the *authoritative* opinions of, for example, the Florida Supreme Court.

[16] Of course, *amici* would urge that the ordinances *do* "clarify" state law rather than "*conflict*" with it. The following discussion serves merely to demonstrate for this Court the obvious susceptibility to limiting constructions of the state and local laws at issue, thus calling for *Pullman* abstention.

between the language of the statute and the ordinance is instructive. Section 828.12 of the Florida Statutes provides for the punishment of a person "who unnecessarily . . . kills any animal, or causes the same to be done." Section 1 of Ordinance No. 87-71 tracks the language of § 828.12, defining "sacrifice" as "unnecessarily . . . kill[ing] any animal, or caus[ing] the same to be done." *See* Hialeah Ordinance 87-71 § 3 (making it "unlawful for any person . . . to sacrifice any animal").

The district court appears to have been considerably influenced by the apparent symmetry between § 828.12 and Ordinance 87-71. (*See* A31-32) Yet such symmetry establishes nothing *per se*. For example, suppose the Hialeah City Council had been concerned with widespread killing, by lethal injection, of unwanted household pets. If the council included "euthanasia of animals" within a proscription against "unnecessarily . . . killing any animal, or causing the same to be done," the language of the ordinance would mirror that of the state statute, but would nonetheless conflict with Chapter 828 of the Florida Statutes, which clearly permits euthanasia of animals by lethal injection. *See* Fla. Stat. §§ 828.055-.065. As a consequence, that ordinance would be preempted under § 828.27(6) as a matter of Florida law.

The same is arguably true on the facts of this case: Ordinance 87-71 is a "clarification" only if Florida lawmakers would characterize ritual sacrifice as an *unnecessary* killing. If they would not, then Ordinance 87-71 adds too much to § 828.12. It would add a characterization which the state legislature would not have. As a consequence, Ordinance 87-71 would then create a "conflict" within the meaning of § 828.27(6), a "conflict" which is preempted under § 828.27(6) as a matter of Florida law — which would mean that Ordinance 87-71 is a nullity irrespective of any federal constitutional problems there may or may not be with it. Thus, a Florida court might very well "construe [§ 828.12] in a fashion that would avoid the need for a federal constitutional ruling." *Harris County Comm'rs*, 420 U.S. at 84. As this Court has noted, in such a case "the argument for abstention is strong." *Id*.

Related to the abstention problem is a particularly delicate issue of federalism, because petitioners' challenge also implicates a section of the Florida Constitution, article 1, § 3, whose impact upon the challenged ordinances is unclear as a matter of Florida constitutional law. That section provides, in relevant part, that "[t]here shall be no law . . . prohibiting *or penalizing* the free exercise [of religion. Yet, on the other hand,] [r]*eligious freedom shall not justify practices inconsistent with public morals, peace or safety*." Fla. Const. art. 1, § 3 (1968 Revision) (emphasis added). Whatever this section of the Florida Constitution *may* mean, *that* meaning, as a matter of state constitutional law, is pivotal because it perforce works to void as unconstitutional any conflicting local ordinances. Whether the ordinances at issue here are unconstitutional as "law[s] . . . prohibiting or penalizing the free exercise [of religion]" under article 1, § 3 is unclear.[17] One can search the district court opinion in vain for any reference to the Florida Constitution, *see Church of the Lukumi Babalu Aye, Inc.*, v. *City of Hialeah*, 723 F. Supp. 1467 (S.D. Fla. 1989), but the resolution of this case under the Florida Constitution may very well be "the nub of the whole controversy," *Harris County Comm'rs*, 420 U.S. at 85 (internal quotation omitted), thus making adjudication of the *federal* constitutional issues unnecessary on grounds of federalism.

As this Court has noted, "[t]his use of equitable powers is a contribution of the courts in furthering the harmonious relation between state and federal authority." *Pullman*, 312 U.S. at 501. This "harmonious relation" can only be furthered if the federal courts adhere to the proposition that "[s]tate courts are the principal expositors of state law." *Moore* v. *Sims*, 442 U.S. 415, 429 (1979). This is particularly true in this case involving important issues of state law. *See Elkins* v. *Moreno*, 435 U.S. 647, 678

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[17] Of course, *amici* would urge that the ordinances do *not* conflict with the state constitution. As with the earlier discussion as to the possibility of preemption as a matter of state law, the discussion here serves merely to demonstrate to this Court the obvious susceptibility of the ordinances to a state court finding of unconstitutionality. This susceptibility counsels for *Pullman* abstention.

(1978) (REHNQUIST, J., dissenting). And for the State of Florida, the importance of the proper, largely state-ascertained balance between religiously-inspired action and public health, safety, welfare, and morals is obvious from the history of her Constitution. In 1868, the Florida Constitution was amended to include the principle that "the liberty of conscience hereby secured shall not be so construed as to justify licentiousness or practices subversive of the peace and safety of the state." Fla. Const. of 1868, Dec. of Rts. § 4, 25 Fla. Stat. Ann. 441 (West 1970). In 1885, a further reference to the requirement that religion had to comport with "moral safety" was added, and that reference survived for eighty-three years. *Id.* § 5, 25 Fla. Stat. Ann. 479, 482 (West 1970). In 1968, the current version of Florida's "Free Exercise Clause" was adopted, tightening the reins on religious practices, providing that "[r]eligious freedom shall not justify practices inconsistent with public morals, peace or safety." Fla. Const. art. 1, § 3 (1968 Revision).

In sum, since it is entirely possible that a Florida court may "be likely to construe [the ordinances] in a fashion that would avoid the need for a federal constitutional ruling," *Harris County Comm'rs*, 420 U.S. at 84, that likelihood makes abstention appropriate here — particularly because state law provides for certification to the Florida Supreme Court of "questions or propositions of the laws of [Florida] which are determinative of [a] cause." *See* Fla. Stat. Ann. § 25.031 (West Supp. 1992). Although the mere availability of certification is not in itself sufficient to warrant abstention, this Court has "recognized the importance of certification in deciding whether to abstain." *Hill*, 482 U.S. at 470, for "[s]peculation by a federal court about the meaning of a state [law] in the absence of prior state court adjudication is particularly gratuitous when, as is the case here, the state courts stand willing to address questions of state law on certification from a federal court." *Brockett*, 472 U.S. at 510 (O'CONNOR, J., dissenting). In fact, in *Employment Div., Dept. of Human Resources* v. *Smith*, 485 U.S. 660 (1988) (*Smith I*) this Court refused to speculate in order to reach the federal constitutional question. *Id.* at 673 ("in the absence of a definitive ruling by the Oregon Supreme Court we are

unwilling to disregard the possibility that the State's legislation regulating the use of controlled substances may be construed to permit peyotism or that the State's Constitution may be interpreted to protect the practice").

The sovereign State of Florida has declared its dedication to the free exercise of religion *and*, at the same time, to public morals, peace, and safety *and* to the humane treatment of animals. The State of Florida, therefore, at least as an initial matter, should be allowed to place Hialeah Ordinances 87-52, 87-71, and 87-72 on the scales without having to suffer the "unnecessary friction" caused by premature federal court adjudication. *See Harman* v. *Forssenius*, 380 U.S. 528, 534 (1965). The district court should have abstained until the uncertain — and possibly dispositive — issues of state law had been decided by a Florida state court.

E. *The* Factual Finding

Finally, petitioners face an insurmountable problem with *a* critical fact in this case. An allegation of discriminatory "intent" or "purpose" or "motive" has always been part and parcel of petitioners' *constitutional* challenge to the ordinances. In their verified complaint (JA6, JA10-14), and at trial (R11, R32, R69-70, R80, R136-37, R144, R148, R158, R178, R182-85, R188, R192-93, RR196, R250-51, R255, R258-59, R478-80, R514-20), and in oral argument after trial (T16-17, T28-35, T63, T86), and indeed in this Court, *see Petitioners' Pet. for Writ of Cert.* at 8, 12, *Petitioners' Br.* at 3, 14-15, 27, petitioners have clearly stated their position that the ordinances are unconstitutional because they were enacted by respondent *with the intent to chill the free exercise of petitioners' religion*. After a 9-day bench trial, this contention was flatly rejected by the district court who, as already noted, found *as a matter of fact* that there was no evidence to establish petitioners' contention that the ordinances had been passed with discriminatory intent (A28, A49) — "the council members' intent," said the court, was only "to stop the practice of animal sacrifice in the City." (A28) There is before this Court, therefore, nothing left to petitioners' constitutional claim *as they framed it* but an adverse finding of fact by the district court, affirmed by the court of

appeals, and corroborated by the singularly striking detail that respondent actually granted petitioners a certificate of occupancy to open their doors as a church in the City of Hialeah. The writ of *certiorari*, then, has brought nothing before this Court but a finding of fact, agreed upon by both lower courts, which this Court will not disturb because that finding of fact is not clearly erroneous. *See United States* v. *Ceccolini*, 435 U.S. 268, 273 (1978).

CONCLUSION

The justiciability problems of this case — of ripeness, standing, mootness, and abstention — make it an unworthy vehicle for an important elucidation of this Court's Free Exercise jurisprudence, especially as nothing remains for this Court's review but a finding of fact upon which the district and circuit courts agreed. Accordingly, the Court should, metaphorically speaking, "abstain from meats offered to idols and from blood, and from things strangled," *Acts* 15:29 (King James), and dismiss the writ of *certiorari* as improvidently granted.

Dated: New York, New York
July 31, 1992

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